

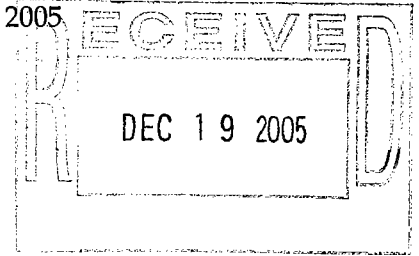
REGIONAL AGENCY
SCOPING COMMENTS



Making San Francisco Bay Better

December 15, 2005

Dan Leavitt, Deputy Director
California High-Speed Rail Authority
925 L Street, Suite 1425
Sacramento, CA 95814



SUBJECT: Notice of Preparation of a Program Environmental Impact Report/ Environmental Impact Statement (Program EIR/EIS) for a Bay Area to Central Valley High-Speed Train

Dear Mr. Leavitt,

The San Francisco Bay Conservation and Development Commission (BCDC) appreciates the opportunity to review and comment on the Notice of Preparation (NOP) of a Program Environmental Impact Report/ Environmental Impact Statement (Program EIR/EIS). Although our Commission has not had the opportunity to review the NOP, these staff comments are based on BCDC's law, the McAteer-Petris Act and the provisions of its *San Francisco Bay Plan* (Bay Plan).

As a permitting authority along the San Francisco Bay shoreline, BCDC is responsible for granting or denying permits for all Bay filling or dredging within the Bay and for shoreline development that occurs within BCDC's jurisdiction, which is defined in the McAteer-Petris Act as 100 feet landward of and parallel to the shoreline of the Bay. BCDC's regulations also require that proposed projects provide the maximum feasible public access consistent with the project to the Bay and its shoreline.

For BCDC's Bay jurisdiction, an essential part of BCDC's regulatory framework is the Commission's Bay Plan. The Bay Plan includes priority land use designations for certain areas around the Bay to ensure that sufficient areas around the Bay are reserved for important water-oriented uses such as ports, water-related industry, parks, wildlife areas, tidal marshes and salt ponds and managed wetlands. With respect to transportation, the Bay Plan includes findings and policies pertaining to transportation projects that identify the issues that BCDC considers when reviewing such projects. Transportation projects are also reviewed to determine consistency with the other relevant findings and policies within the Bay Plan (e.g., public access, tidal marshes and tidal flats, recreation).

Given the potential adverse impacts that transportation projects can have on Bay resources when located along the Bay shoreline, or in the Bay, it is important that the planning and design of these facilities is done in a way that both protects and enhances the Bay as a regional resource, while ensuring the viability of a safe and efficient transportation system for the Bay Area. The NOP for the High-Speed Rail project contains a number of different alignments, some that may have impacts on Bay resources and some that would largely avoid the Bay. If portions of the preferred alignment are located within BCDC's jurisdiction, it is important for project proponents and sponsors to contact BCDC early in the project planning phase in order to identify impacts to Bay resources early enough in the planning process to avoid and mitigate impacts to these resources. Staff has the following comments on the NOP.

The proposed alignments for the High-Speed Rail system in the urban areas near the Bay appear to be designed to use existing rail infrastructure. In locations within BCDC's jurisdiction where new infrastructure must be developed or existing infrastructure must be expanded, the

alignments chosen should be sited and designed to avoid adverse affects on Bay resources (e.g., tidal marshes, tidal flats, restored areas, habitats that support endangered species) and BCDC priority use areas (e.g., waterfront park, beach, wildlife refuge). Infrastructure placement and improvement within BCDC's jurisdiction should also be designed to minimize the amount of fill in the Bay (fill means earth or any other substance or material including pilings or structures placed on pilings) that is necessary and to provide the maximum feasible public access that would be consistent with the project. The design and siting of new infrastructure should incorporate non-motorized public access and preserve and enhance visual access. Historically, rail lines and roadway infrastructure along the Bay shoreline resulted in adverse impacts on non-motorized public access, recreation and visual access in many communities near the Bay shoreline. The provision of non-motorized pathways, such as the Bay Trail, grade separated crossings and the support of non-motorized access to any proposed rail stations will help to ensure that the High-Speed Rail project is integrated fully into the existing communities and transportation systems.

If a bridge is proposed as part of the project, the McAteer-Petris Act identifies bridges as water-oriented uses that can be approved by the Commission if there is not an alternative upland location for the route and if the fill is the minimum necessary to achieve the purposes of the project. The Bay Plan transportation policies include two policies that pertain to bridges. Policy 3 requires that adequate analysis be done to determine that there is no upland alternative for the route and Policy 4 provides guidelines for constructing and designing a bridge over the Bay.

BCDC's staff look forward to working with the High-Speed Rail Authority on any portions of the Bay Area alignment that cross the Bay or traverse its shoreline. Thank you again for the opportunity to review and comment on the NOP for the Program EIR/EIS. If you have any questions please contact me directly at (415) 352-3642.

Sincerely,

A handwritten signature in dark ink, appearing to read 'L. Lowe', written in a cursive style.

LINDY L. LOWE
Coastal Planner

CC. Andrea Gaut, Permit Analyst

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December 15, 2005

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Re: Grassland Water District / Grassland Resource Conservation District
Scoping Comments on the Bay Area to Central Valley Program EIR/S

Dear Deputy Director Leavitt:

On behalf of the Grassland Water District ("GWD") and the Grassland Resource Conservation District ("GRCD"), this letter provides comments on the proposed scope of the Bay Area to Central Valley Program Environmental Impact Report / Environmental Impact Statement ("EIR/S") for the California High Speed Train System ("HST" or "the Project"). The EIR/S is a second-phase Program EIR/S being prepared pursuant to the California Environmental Quality Act¹ ("CEQA") and the National Environmental Policy Act² ("NEPA"). A first-phase Program EIR/S on the statewide HST has already been completed.

The High Speed Rail Authority ("Authority") is the lead agency for this Project for purposes of CEQA, while the Federal Railroad Administration ("FRA") will serve as the federal lead agency for environmental review under NEPA. These comments are submitted in response to the Notice of Preparation ("NOP") issued by the Authority, dated November 14, 2005.

The NOP describes the proposal of the Authority and the FRA to select a preferred HST alignment between the Bay Area and the Central Valley ("the Northern Crossing alignment"). The NOP states that a broad corridor of potential

¹ Pub. Res. Code §§ 21000 *et seq.*

² 42 U.S.C. § 4321 *et seq.*

alignments will be considered, generally bounded by (and including) the Pacheco Pass (SR-152) to the south, the Altamont Pass (I-580) to the north, the BNSF Corridor to the east and the Caltrain Corridor to the west.

The GWD and GRCD (collectively, "the Districts") are concerned about the proposed Project because the Authority is considering selecting an alignment that may pass through or otherwise impact the Districts' jurisdictional boundaries. The combined area of the GWD and GRCD contains approximately 60,000 acres of privately owned wetlands located north, east and south of the City of Los Banos in Merced County. The Districts are charged under state law and federal contract with the responsibility to manage water resources and carry out conservation programs in order to preserve and protect this resource, primarily as habitat for waterfowl and other wildlife species. Land stewardship in the Districts mostly comprises privately owned and managed waterfowl hunting clubs that receive their water supply from GWD.

The Districts together with the adjacent federal wildlife refuges, state wildlife areas and state park lands make up the Grasslands Ecological Area ("GEA"). Attached as Exhibits 1 through 3 to this Comment are three maps that show the boundary of the GEA and the federal and state lands and easements within the GEA. Encompassing approximately 180,000 acres, the GEA is the largest wetland complex in California and contains the largest block of contiguous wetlands remaining in the Central Valley.³ This region is considered a critical component of the Central Valley wintering habitat for waterfowl and has been recognized as a resource of international significance.

Bisection of the GEA by a high speed rail may interfere with critical wildlife corridors, disrupt canals and waterways, degrade water quality, interfere with waterfowl nesting and breeding, and increase wildlife mortality rates due to noise, shock and collision impacts. We urge the Authority to recommend that any alignment of the proposed high-speed rail system avoid crossing or otherwise fragmenting the GEA. At a minimum, the Authority must ensure that no decision on the alignment shall be made until the potential impacts on the GEA are fully and thoroughly examined.

³ Exhibit 8, Grassland Water District, Land Use and Economics Study: Grasslands Ecological Area (July 2001), p. 2 (hereafter "*Grassland Water District*").

We have attached a number of maps, studies and expert comments that are intended to assist you in preparing the EIR/S. These studies and comments supplement the issues addressed below and may raise important issues and provide important information in addition to those described in this comment letter.

I. IMPORTANCE OF GRASSLAND ECOLOGICAL AREA

The GEA is an irreplaceable, internationally significant ecological resource. The GEA is located west of the City of Merced and surrounds the City of Los Banos to the north, east and south. Originally, this area was part of a four million acre wetland system in the Central Valley of California. Of the 300,000 acres that remain, the GEA is the largest contiguous block of wetlands in the Central Valley. The protection of this area has been the result of private and public investments and partnerships.

The GEA boundary is a non-jurisdictional boundary designated by the U.S. Fish and Wildlife Service in order to identify an area for priority purchase of public easements for wetland preservation and enhancement.⁴ The GEA includes federal wildlife refuges, a state park, state wildlife management areas and the largest block of privately managed wetlands in the state. The GEA also includes a large and growing portfolio of federal and state conservation easements. Through 1998, conservation easements had been acquired on over 64,000 acres at a total cost of over \$28 million.⁵

The U.S. Fish and Wildlife Service recently proposed significantly expanding the GEA boundary to the east by an additional 45,000 acres. The area of the proposed expansion is indicated on the brochure attached as Exhibit 16.

The GEA is of considerable importance because it preserves a variety of habitats important to the maintenance of biodiversity on a local, regional, national and international scale. It has been estimated that thirty percent (30%) of the Central Valley migratory population of waterfowl use this area for winter foraging.⁶ The GEA is a major wintering ground for migratory waterfowl and shorebirds of the Pacific Flyway. Over a million waterfowl are regularly found in the GEA during the

⁴ *Grassland Water District* at 2.

⁵ *Id.* at pp. 11-12.

⁶ U.S. Bureau of Reclamation, *Final NEPA EA, Refuge Water Supply Long-Term Water Supply Agreements* (January 2002).

winter months.⁷ The GEA also provides habitat for more than 550 species of plants and animals, including 47 plant and animal species that are endangered, threatened or candidate species under state or federal law.⁸

The Western Hemisphere Shorebird Reserve Network has designated the GEA as one of only 22 international shorebird reserves in the world.⁹ The GEA was also recently recognized in February of 2005 as a Wetland of Worldwide Importance by the Ramsar Convention.¹⁰ The Ramsar Convention is an international agreement dedicated to the worldwide protection of particular ecosystems. Ramsar member nations work to coordinate wetland conservation efforts, particularly for species that rely on ecosystems that span member nation's borders. The designation of the GEA as a Wetland of Worldwide Importance illustrates the tremendous worldwide ecological value of the GEA ecosystem. The GEA is one of only four such wetland sites in California, and one of twenty-two sites in the country.

In addition to providing critical biological habitat, the Grasslands' wetlands also provide a wide range of other benefits to the area, including flood control and educational and recreational opportunities. This concentration of wetlands and wildlife is a unique feature of the area, attracting hunters and other recreational visitors who make significant contributions to the economy of the area. The GEA receives over 300,000 user visits per year for hunting, fishing and non-consumptive wildlife recreation.¹¹ Recreational and other activities related to habitat values within the GEA contribute \$41 million per year to the Merced County economy, and account for approximately 800 jobs.¹²

A thorough study of the potential impacts that the Project may have on the GEA is vital to ensure it does not damage this irreplaceable ecological resource of international importance.

⁷ Exhibit 8, *Grasslands Water District*, supra, at p. 2.

⁸ *Id.*

⁹ Exhibit 11, Fredrickson, Leigh H. and Laubhan, Murray K, *Land Use Impacts and Habitat Preservation in the Grasslands of Western Merced County, CA* (February 1995), p.3.

¹⁰ See <http://international.fws.gov/ramsar/ramsar.htm>.

¹¹ Exhibit 8, *Grasslands Water District*, supra, at p. 14

¹² *Id.* at p. 21.

II. CEQA REQUIRES AGENCIES TO BE INFORMED ABOUT THE ENVIRONMENTAL CONSEQUENCES OF THEIR DECISIONS BEFORE THEY ARE MADE

CEQA has two basic purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.¹³ "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'"¹⁴

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.¹⁵ If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns" specified in CEQA section 21081.¹⁶

In order for the EIR/S to satisfy these basic purposes, it must include: (1) an accurate and complete description of the project setting, including an adequate description of the existence and importance of internationally significant wetlands habitat and wildlife within the GEA; (2) a complete project description including but not limited to, significant construction, engineering and operational aspects of the project; (3) identification of all potential environmental impacts of the Project on the wetlands habitat and wildlife within the GEA, including but not limited to, construction, land-use, operational and growth-inducing impacts; (5) identification of feasible and enforceable measures to mitigate potential impacts on the GEA; and (6) identification of the environmentally superior alignment supported by findings regarding significance of environmental impacts, feasibility of mitigation and feasibility of alternatives.

¹³ 14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a)(1).

¹⁴ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

¹⁵ CEQA Guidelines § 15002(a)(2)-(3); see also, *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400.

¹⁶ CEQA Guidelines § 15092(b)(2)(A)-(B).

III. THE EIR/S MUST ADEQUATELY DESCRIBE THE PROJECT SETTING

An accurate description of the environmental setting is critical because it establishes the baseline physical conditions against which a lead agency can determine whether an impact is significant.¹⁷ Under CEQA and NEPA, an EIR/S must include a description of the physical environmental conditions in the vicinity of the project from both a local and regional perspective.¹⁸ The EIR/S must provide an accurate description of the environmental baseline, because "[t]he impacts of the project must be measured against the 'real conditions on the ground.'"¹⁹

In order to comply with this requirement, the EIR/S for the proposed project must include a full description of the GEA, including its location in relation to the proposed project. The importance of this area should also be disclosed. Maps should be provided showing where potential alignments may cross the GEA and denoting, for example, wildlife habitat, flyways, state and federal easement lands and other significant resource areas. The EIR/S should also disclose if any of the proposed alignments would intersect the area that the Fish and Wildlife Service is proposing to incorporate into the GEA.²⁰

IV. THE EIR/S MUST ADEQUATELY DESCRIBE THE PROJECT

An accurate and stable project description is the *sine qua non* of an informative, legally adequate EIR/S.²¹ A legally sufficient project description must contain a "general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities."²² While an EIR/S need not contain design-level description of the project, it must contain sufficient specific information about the project to allow an evaluation and review of its environmental impacts.²³ A complete project description must include a description of significant construction, engineering and operational aspects of the project.

¹⁷ CEQA Guidelines § 15125(a).

¹⁸ *Id.*; 40 C.F.R. § 1502.15.

¹⁹ *Save Our Peninsula Committee v. Monterey Board of Supervisors* (2001) 87 Cal.App.4th 99, 121.

²⁰ See Exhibit 16.

²¹ *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192.

²² CEQA Guidelines § 15124(c).

²³ *Cry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20.

The EIR/S must fully describe key project features such as noise barriers. Such barriers could adversely impact wildlife and further fragment habitat areas.²⁴ Another key project feature that the EIR/S must fully describe is the major crossing it must build over the San Joaquin River. Under a Pacheco Pass alignment, this crossing would likely occur just a few miles from the sensitive habitat of the GEA. The EIR/S must identify this project component and describe how this undertaking would be accomplished.

The EIR/S must also include a sufficiently detailed description of construction activities. The duration of noisy and invasive construction activities through and adjacent to the GEA may severely disrupt biological species, habitat, water quality and air quality. In addition, the construction of the San Joaquin River crossing could pose serious impacts to water quality and riparian habitat. Without a complete and clear description of what it will actually take to construct the HST in these areas, impacts to the GEA from the construction of this project cannot be meaningfully analyzed.

V. THE EIR/S MAY NOT DEFER ANALYSIS OF POTENTIALLY SIGNIFICANT IMPACTS TO LATER STUDIES

Even though this document is described as a program EIR/EIS, the potential impacts of choosing a Northern Crossing alignment that passes through the GEA must be analyzed now in this document. Analysis of these potential impacts may not be deferred until after a decision on this alignment has already been made. Such post-hoc review is inconsistent with CEQA's goal of informed decision making.

Where an EIR is a program EIR, it must be sufficiently detailed to provide a full analysis of the potential environmental impacts of any discretionary decisions that would be made in reliance on the EIR, but may defer to a later study full analysis of the potential environmental impacts of actions or decisions that would not be taken until after further environmental study.²⁵ In the case at hand, the NOP states that the intended use of the EIR/S is to choose a preferred alignment between the Bay Area and the Central Valley. In order to make such a choice, the

²⁴ Exhibit 9, Thomas Reid Associates, *Grassland Water District Land Planning Guidance Study* (1995), Appendix A (Noss, R.F., *Translating Conservation Principles to Landscape Design for the Grassland Water District* (1994)), p. 44-47.

²⁵ 14 Cal Code Regs § 1512(b); *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182.

EIR/S must first fully analyze all the potential impacts that may arise if a particular alignment is chosen and it must identify feasible mitigation measures to address these impacts.

VI. THE EIR/S MUST IDENTIFY AND ANALYZE ALL DIRECT AND INDIRECT POTENTIALLY SIGNIFICANT IMPACTS

Both CEQA and NEPA require that the EIR/S identify and analyze all direct and indirect potentially significant environmental impacts of a project.²⁶ A significant environmental impact is "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance."²⁷ In preparing an EIR, a lead agency is required to

analyze the relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human uses of land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality and public services. The EIR [must] also analyze any significant environmental effects the project might cause by bringing development and people into the area affected.²⁸

The primary function of an EIR is to "inform the public and responsible officials of the environmental consequences of their decisions before they are made."²⁹ To fulfill this function, an EIR must be detailed, complete, and must "reflect a good faith effort at full disclosure."³⁰ An adequate EIR must also contain facts and analysis, not just an agency's conclusions.³¹

²⁶ Pub. Res. Code § 21100(b)(1); CEQA Guidelines § 15126.2(a); 40 C.F.R. 1508.8, 1502.16.)

²⁷ CEQA Guidelines § 15382.

²⁸ *Id.* at § 15126.2(a).

²⁹ *Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1123.

³⁰ CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

³¹ See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568 (1990).

VII. THE EIR/S MUST IDENTIFY FEASIBLE MITIGATION MEASURES

Both CEQA and NEPA require the proposal and description of mitigation measures sufficient to minimize the significant adverse environmental impacts identified in the EIR.³² This requirement is the heart of CEQA. CEQA imposes an affirmative obligation on agencies to avoid or to reduce environmental harm by adopting feasible project alternatives or mitigation measures.³³

Mitigation measures must be designed to minimize, reduce or avoid an identified environmental impact or to rectify or to compensate for that impact.³⁴ A public agency may not rely on mitigation measures of uncertain efficacy or feasibility.³⁵ Mitigation measures must be specific and fully enforceable through permit conditions, agreements or other legally binding instruments.³⁶ Mitigation measures that are vague or so undefined that it is impossible to evaluate their effectiveness are legally inadequate.³⁷

The EIR/S may not defer the development of mitigation measures until project-level review.³⁸ CEQA and NEPA require the Authority to identify feasible mitigation measures prior to taking an action that would rely on those mitigation measures.

In the case at hand, the Authority has indicated that it intends to choose a preferred alignment between the Central Valley and the Bay Area solely on the basis of the analysis in the EIR/S. In order to make such a choice, the EIR/S must first fully analyze all the potential impacts that may arise if a particular alignment is chosen. It must also identify feasible mitigation measures to address these impacts. The identification of issues related to the cost or feasibility of mitigation

³² Pub. Res. Code §§ 21002.1(a), 21100(b)(3); 40 C.F.R. §§ 1502.14(f), 1502.16(h); *Robertson v. Methow Valley Citizens Council* (1989) 420 U.S. 332, 352.

³³ Pub Res. Code §§ 21002-21002.1.

³⁴ CEQA Guidelines § 15370.

³⁵ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).

³⁶ *Id.* at § 15126.4(a)(2).

³⁷ *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.

³⁸ *Stanislaus Nat'l Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 199.

measures are essential since they could tip the balance in the final selection of the Northern Crossing alignment.

VIII. THE EIR/S MUST ANALYZE THE POTENTIAL BIOLOGICAL IMPACTS OF THE HST ON GEA WILDLIFE AND HABITAT

The EIR/S must include sufficient analysis of the potential Project impacts on the biological resources of the GEA to permit an informed consideration of the implication of choosing one alignment over the other. Once the presence of the biological resources in the GEA have been identified and described, the EIR/S must then analyze how the direct and indirect impacts of the project would affect these resources.³⁹ Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both short-term and long-term effects.⁴⁰ The discussion should include relevant specifics of the area, the resources involved, physical changes, and alterations to the ecological systems.⁴¹

A complete analysis of the potential biological impacts of the HST on the GEA is essential due to the considerable importance of this area. As discussed in more detail above, the GEA constitutes the most important waterfowl wintering area on the Pacific Flyway, and international treaties have recognized the habitat as a resource of international significance. The complex of wetland habitats within the GEA is of special significance because the size, juxtaposition, and connectivity of the different wetland types provide a unique opportunity to sustain native migratory and resident wildlife populations.⁴²

The associated uplands surrounding the semi-permanent wetlands are also of special importance because they provide nesting areas for waterbirds, important food sources for grazers such as geese, and essential habitat for endangered species and numerous upland wildlife. Over one million waterfowl winter in the GEA each year and the GEA provides critical habitat for over 550 species of plants and animals, including 47 plant and animal species that are endangered, threatened or candidate species under state or federal law.

³⁹ CEQA Guidelines Section 15126(a).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Exhibit 11, Fredrickson, Leigh H. and Laubhan, Murray K., *Land Use Impacts and Habitat Preservation in the Grasslands of Western Merced County, CA* (February 1995).

Prior to the selection of an alignment through this area, a complete assessment of all the Project's potential biological impacts on this important ecological resource must be made. These potential impacts include interruption of habitat connectivity, interference with habitat conservation plans, train noise and vibration impacts, shock wave impacts, train collisions with large animals, water quality impacts and construction impacts.

A. The EIR/S Must Analyze the Project's Potential Impact on Bisection and Fragmentation of the GEA

1. Interference with Wildlife Corridors

The Proposed Pacheco alignment along Henry Miller Road would further fragment a critical southern spur of the GEA from the rest of the contiguous wetlands and isolate an additional small section of wetlands as well. This route cuts across the southern part of the Volta State Wildlife Management Area and the Los Banos State Wildlife Management Area (the oldest Wildlife Management Area in the state - created in 1929). It would also sever already fragmented wildlife corridors connecting the North and South grasslands.⁴³

A HST alignment through the GEA would likely result in significant fragmentation impacts on the wetland habitat and wildlife due to its creation of a physical barrier bisecting this area.⁴⁴ Potential fragmentation impacts include interference with wildlife movement and migration corridors, interference with drainage, and the flow of irrigated water through the managed wetlands and interference with access to hunting clubs.

These impacts could be dire. A recent study, found that fragmentation and isolation of the North from the South Grasslands "could have a profound effect on the movement of waterfowl between different parts of the refuges they now utilize on a daily basis."⁴⁵ Noted conservation biologist Reed Noss has concluded that "[a]ny further fragmentation of this vulnerable linkage between the north and south units of the Grassland Management Area could well provide the 'final blow' in

⁴³ See Exhibit 1, Map of Federal, State and Privately Owned Lands in GEA. Pacheco alignment is proposed to run just north of and parallel to Henry Miller Road, isolating the sections of the GEA south of this area.

⁴⁴ Exhibit 4, *Dr. Weissman Comments*.

⁴⁵ Exhibit 8, *Grasslands Water District*, *supra*.

fragmenting the wetland ecosystem."⁴⁶ The proposed alignment along Henry Miller Road could very well be this final blow.

An alternative alignment along Highway 152 would pose identical problems to the Henry Miller Road alignment. Alignments elsewhere through the GEA would create new areas of fragmentation and potentially exacerbate the existing fragmentation concerns.

Construction of wildlife underpasses, bridges, and/or large culverts, could be considered to provide wildlife movement corridors. However, a few underpasses alone would likely be insufficient to address this impact. Fragmentation does not require complete separation. Rather:

It is a relative and cumulative problem. After some threshold of fragmentation is exceeded, movement of individuals will no longer occur regularly enough to maintain the population of a fragmentation-sensitive species. Until detailed, long-term studies of species in the [GEA] are performed, the prudent course is to prevent any further fragmentation of the system. Indeed, professional opinion among scientists is now firm that the burden of proof in such matters must rest on those who propose activities that may fragment or otherwise degrade ecosystems.⁴⁷

The EIR/S must provide evidence for the success of any proposed mitigation measures in a wetland environment like the GEA and provide detail on the number, location and type of such structures to facilitate wildlife movement across the railroad right-of-way. Without such information the impact of the proposed Pacheco Pass alignment on the GEA cannot be fairly assessed. Nor may the potential cost of such mitigation be fully taken into account when selecting the preferred Northern Crossing alignment.

⁴⁶ Exhibit 9, Thomas Reid Associates, *Grassland Water District Land Planning Guidance Study* (1995), Appendix A (Noss, R.F., *Translating Conservation Principles to Landscape Design for the Grassland Water District* (1994)), p. 47.

⁴⁷ Exhibit 9, Thomas Reid Associates, *Grassland Water District Land Planning Guidance Study* (1995), Appendix A (Noss, R.F., *Translating Conservation Principles to Landscape Design for the Grassland Water District* (1994)), p. 47.

2. Disruption of Canals and Waterways

Wetland ecosystems are also sensitive to disruption of water flow and other hydrological impacts that accompany fragmentation.⁴⁸ For example, drainage canals, dikes, and roads have had severe effects on the hydrology, vegetation, flora and fauna of the Everglades.⁴⁹

In the case at hand, the proposed Pacheco Pass route along Henry Miller Road would bisect several waterways within the GEA essential to the management of these critically important wetlands and wildlife habitat.⁵⁰ These waterways include the Santa Fe and San Luis Canals, which convey water to more than 31,000 acres of public and privately owned wetlands. They also include Mud Slough South (a natural channel) and the Porter-Blake Bypass, which serve as drainage facilities for thousands of acres of additional wetlands thus making possible the timely release of water. This is a crucial element in the management of seasonal habitat.

The EIR/S must identify each of the waterways that potential alignments through the GEA may bisect and must analyze the potential impacts that may result. Mitigation measures must be identified to ensure that the design and construction of the project will not impede the flow and maintenance of water in these channels. Without such information the impact of this alignment on the GEA cannot be fairly assessed.

The bisection of these waterways by the HST may also have a significant impact on important wildlife corridors. Among the threatened species that would likely be affected by the bisection of the GEA is the giant garter snake (*thamnophis gigas*), a state and federally listed threatened species.⁵¹ This snake is not only historically known in the GEA, but it has been recently documented in waterways both north and south of the City of Los Banos.⁵² These snakes were found in both natural channels and water conveyance canals. It is well documented that the giant garter snake inhabits waterways, including irrigation and drainage canals, sloughs, and low gradient streams.

⁴⁸ *Id.*; see also Exhibit 4, *Dr. Weissman Comments*.

⁴⁹ *Id.*

⁵⁰ Exhibit 7, *Don Marciochi Letter*.

⁵¹ Exhibit 15, *Dean Kwasny letter*.

⁵² *Id.*

The San Luis Canal, which would be bisected by the Henry Miller Road route, has been found to contain the necessary habitat components for the giant garter snake, including: adequate water during the snake's active season, populations of food organisms, emergent, herbaceous wetland vegetation for escape cover and foraging, and grassy banks and openings in waterside vegetation for basking.⁵³ In addition, the San Luis Canal functions as a movement corridor for the giant garter snake.⁵⁴

The EIR/S must identify the potential for interference with waterway habitats and corridors. The Authority must assess the threat the HST project may pose to the green garter snake's habitat and waterway corridor before it commits itself to a particular HST alignment.

3. Interference with Access to Hunting Clubs

The proposed bisection of the GEA by the HST also poses the potential to impede the access of GWD members to their hunting clubs.⁵⁵ The continued protection of these privately managed wetlands depends largely on the continued viability of these lands as private duck hunting clubs. Currently, 181 duck hunting clubs exist within the GWD and the GRCD. The EIR/S fails to consider the impact that its proposed Pacheco Pass alignment may have on access to these clubs. This issue must be examined prior to any final decision being made as to the selection of this route.

B. Noise and Vibration

The HST will likely produce significant noise and vibration each time it passes through the GEA. The EIR/S must disclose what the actual noise exposure would be in decibels, at varying distances from the track. The EIR/S must also analyze the potential sensitivity of birds and other wildlife in the GEA to the noise produced by the HST.

In her attached comments, Dr. Karen Weissman examines the available data on this issue and estimates that the Lmax noise from the HST passing through the GEA at speeds around 200 miles per hour would be around 101.5 dB.⁵⁶ Even at high speed, the train will take three to four seconds to pass a point receptor. This

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

means the SEL at 50 feet distance is probably around 105 to 110 dB. The threshold for significant noise impacts on wild birds and mammals is a sound level of 100 dB SEL. With three dB drop-off per doubling distance for a line source, the high-speed train will likely exceed the significance threshold for wild birds and mammals out to a distance of 500 feet.⁵⁷

Train frequency also determines the overall noise impact of the project. The EIR/S must clearly state the potential frequency of trains passing through the GEA. An operational report for the first-phase EIR/S contained a schedule showing that 134 total trains would potentially pass along the Northern Crossing alignment each day. This schedule described an average of one train every 11 minutes, with trains passing as frequently as every 5 minutes during the busy portion of the business day. This means that startle effects will be frequent and that the overall sound level will rise substantially.⁵⁸

Noise disturbances of wildlife in the GEA are of significant concern. Noise disturbances may displace waterfowl from feeding grounds, cause desertion of nests, increase energetic costs associated with flight, and may lower productivity of nesting or brooding waterfowl, among other impacts.⁵⁹ The EIR must evaluate the actual likely impacts of the train noise and vibration on the sensitive wildlife species in the GEA that may be exposed to these noise levels on a daily basis.

C. Shock Wave

High-speed trains will produce a significant shock wave each time they pass.⁶⁰ The shock wave can be felt at varying distances from the train, depending upon its speed. It could produce a harmful startle response in wildlife. If birds are flying within the immediate area where the train passes, it could possibly interrupt their flight.⁶¹ The EIR/S should quantify the shock wave that emanates from the train moving at over 200 mph and determine its potential effects on wildlife in the GEA.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Exhibit 12, U.S. Fish & Wildlife Leaflet 13.2.15; Exhibit 4, *Dr. Weissman Comments* at pp. 3-4 (citing numerous reports).

⁶⁰ Exhibit 4, *Dr. Weissman Comments*.

⁶¹ *Id.* (citing Howe M. S. "The compression wave produced by a high-speed train entering a tunnel." *Proceedings: Mathematical, Physical & Engineering Sciences* 1 June 1998, vol. 454, no. 1974, pp. 1523-1534.)

D. Collisions with Trains

Animals that may be crossing the tracks in the GEA can be hit by one of some 100 plus trains per day. Although a likely mitigation for the project will be subterranean tunnels to allow wildlife passage (EIR/S p. 3.15-31), there may still be substantial numbers of wildlife that attempt to cross the track at grade level and may be hit by trains.

Species at risk include the giant garter snake, San Joaquin kit fox, tule elk and bobcat.⁶² The giant garter snake, for example, can be found as far away as 820 feet from the edge of marsh habitat; U.S. Fish and Wildlife service recommends a minimum buffer of 200 feet from the banks of giant garter snake habitat.⁶³ The HST project, however, proposes trains running by every 5 to 11 minutes right over the waterways inhabited by this threatened species.

The EIR/S should estimate the mortality to each wildlife species that is vulnerable to train collisions and the effect of this mortality on the respective populations. For special status species such as the green garter snake or the San Joaquin kit fox, the EIR/S should also discuss whether these train impacts would be substantial enough to cause further decline in the status of the species, or would interfere with the recovery of the species.

E. Construction Impacts

Analysis of potential construction impacts on the GEA is required before choosing a preferred Northern Crossing alignment because this information could tip the preferred selection to a more developed route where fewer collateral impacts will result. Potential construction impacts on the GEA that must be studied in a revised EIR/S include the impacts of truck and other vehicular traffic, pollution runoff, air quality, equipment storage and laydown areas, blasting and pile-driving, and temporary disruption of water supply deliveries.⁶⁴

F. Water Flow and Water Quality

The EIR/S must examine the potential impacts the Project may have on water flow and water quality in the GEA. The HST Project has the potential to

⁶² Exhibit 4, *Dr. Weissman Comments*; Exhibit 15, Dean Kwasny letter.

⁶³ Exhibit 15, Dean Kwasny letter.

⁶⁴ See Exhibit 4, *Dr. Weissman Comments*.

cause significant impacts to the complex of natural and man-made channels which move water through the wetlands, establish the waterfowl habitat and support nearly all the GEA ecological functions.⁶⁵ Without illumination of these potential impacts, the Authority would be unable to make an informed decision as to the preferred route between the Central Valley and the Bay Area.

According to Dr. Weissman's review of the Project, the HST would probably be constructed on an earthen berm through most of the GEA, elevated above the flood level. The berm would need to be wide enough for two tracks. Construction of the berm would likely entail tremendous wetland fill and the importation of possibly a million cubic yards of fill, depending on the actual route taken.⁶⁶ The berm would need to be keyed in to the substrate, meaning that the organic top layer would be removed and drainage ditches and water pumps would be installed to allow engineered placement of fill. Even where trestle construction crossed water channels, there would be disturbance from clearing and pile driving.⁶⁷

All that construction would alter the present water flow patterns, introduce sediment, and create stagnant sections of the wetlands producing essentially permanent water quality degradation. Water quality impacts on wildlife may range from disruption of food sources to increased risk of avian botulism.⁶⁸

The GWD has spent much time and money managing the application of water in the Grasslands. Historically, water quality problems in the Grasslands have had a tremendous impact on wildlife. Imposition of a hydraulic barrier across the GEA will materially impact the south-to-north water management in the GEA, which is essential to maintaining water quality.⁶⁹ The potential impact that construction of a HST would have on water flow and water quality in the GEA must be analyzed before the Authority chooses its preferred alignment.

Not only is the GEA a unique, diminishing resource in the Central Valley and the State of California, but these wetlands are also critical to the survival of migratory waterfowl, shorebirds, and other wildlife. Further loss and degradation of this largest remnant wetland habitat in the Central Valley will also have a negative impact on migratory species that move across the North American

⁶⁵ Exhibit 4, *Dr. Weissman Comments*.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

continent and among continents during their annual cycle. For these reasons, protection of this unique ecosystem is essential to the preservation and maintenance of the productivity of this important natural heritage.

IX. THE EIR/S MUST CONDUCT A 4(F) ASSESSMENT OF THE PROJECT'S IMPACT ON THE GEA

The EIR/S must evaluate the Project's potential impacts on the substantial state, federal and public conservation investments that have been made to protect the GEA. Section 4(f) of the Department of Transportation Act requires the EIR/S to take into account the public investment that has been made to protect this critically important ecological resource.

The GEA includes federal wildlife refuges, a state park, state wildlife management areas and the largest block of privately managed wetlands in the state. These privately managed wetlands contain a large and growing portfolio of federal and state conservation easements. Through 1998, conservation easements had been acquired on over 64,000 acres at a total cost of over \$28 million.⁷⁰ The EIR/S must analyze any inconsistency of the proposed project with the conservation easements and state and federal wildlife areas in the GEA.

Section 4(f) states that the transportation secretary may not approve a transportation project "on publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, state or local significance" unless "(1) there is no prudent and feasible alternative to using that land; and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from the use."⁷¹

Section 4(f) requires federal agencies to consider alternatives and creates a presumption that public parks and natural resource areas protected by this section may not be used for transportation projects unless truly compelling reasons indicate that no alternative route is possible.⁷² This requirement applies even if the land from the wildlife and waterfowl refuge is not directly taken for the project, but the project will nonetheless impact the wildlife area.⁷³

⁷⁰ Exhibit 8, *Grassland Water District*, supra, at pp. 11-12.

⁷¹ 49 U.S.C.A. § 303(c).

⁷² *Citizens to Preserve Overton Park, Inc. v. Volpe* (1971) 401 U.S. 402, 412.

⁷³ Mandelker, *NEPA Law and Litigation* (2nd Ed. 2001) § 2:19, fn. 1, p. 2-44.

Section 4(f) applies to any lands in which a governmental body has a proprietary interest in the land for public recreation or wildlife and waterfowl conservation purposes. This includes conservation easements obtained for the purpose of wildlife and waterfowl habitat protection.⁷⁴ Accordingly, Section 4(f) applies to the more than 64,000 acres of privately managed wetlands in the GEA that are subject to federal and state conservation easements in addition to the federal wildlife refuges, state wildlife areas and state park land located within the GEA.

Section 4(f) creates a "specific and explicit bar" to the sacrifice of these public resources for transportation projects. "Only the most unusual situations are exempted."⁷⁵ Under section 4(f), the protection of state and federal natural resource areas and conservation easements take precedence over other Project considerations including cost and directness of route.⁷⁶

X. THE EIR/S MUST COMPLY WITH EXECUTIVE ORDERS TO ANALYZE AND MINIMIZE IMPACTS ON WETLANDS AND MIGRATORY BIRDS HABITAT

The EIR/S must comply with the executive wetlands order issued by President Carter. Executive Order 11990 requires federal agencies to "avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds: (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use."⁷⁷ This executive order has been held judicially enforceable.⁷⁸

The analysis of the Project's impacts on the GEA must also comply with the executive order issued by President Clinton for the protection of migratory birds. Executive Order 13186 requires federal agencies to avoid or minimize the effects of their actions on migratory birds.⁷⁹ It requires that evaluation of agency projects

⁷⁴ Mandelker, *NEPA Law and Litigation* (2nd Ed. 2001) § 2:19, p. 2-45.

⁷⁵ *Id.* at 411.

⁷⁶ See *Id.* at 412-13.

⁷⁷ Executive Order 11990, 42 Fed. Reg. 26,961 (1977).

⁷⁸ *City of Carmel-by-the-Sea v. United States Dep't of Transp.* (9th Cir. 1997) 123 F.3d 1142.

⁷⁹ Executive Order 13186, 66 Fed. Reg. 3853 (2001).

under NEPA consider the effects of the proposed action on migratory birds, with emphasis on species of concern.⁸⁰

The GEA provides a nationally and internationally important wetland habitat for migratory waterfowl and shorebirds of the Pacific Flyway. Under these two executive orders, the Authority and the FRA may not choose a HST alignment through the GEA unless there is no practicable alternative to such an alignment.

XI. THE EIR/S MUST ADEQUATELY ANALYZE CUMULATIVE IMPACTS

CEQA and NEPA require that cumulative impacts be analyzed. The CEQA Guidelines define cumulative impacts as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts."⁸¹ "[I]ndividual effects may be changes resulting from a single project or a number of separate projects."⁸² Federal Regulations implementing NEPA also require that the cumulative impacts of the proposed action be assessed.

We are particularly concerned about the cumulative impacts of aligning the rail project along Henry Miller Road or Highway 152. These two roadways, along with increasing development in the City of Los Banos, already dangerously fragment the GEA. As a result, the portion of the GEA south of Henry Miller Road is considered the most threatened area of this ecosystem. The proposed HSR would further fragment this area by adding a barrier fence along this route and by the passing of high-speed trains every five minutes.

XII. THE EIR/S MUST ADEQUATELY ANALYZE FEASIBLE ALTERNATIVES

CEQA requires that an EIR provide a discussion of project alternatives that allows meaningful analysis.⁸³ An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially

⁸⁰ *Id.*

⁸¹ CEQA Guidelines § 15355(a).

⁸² *Id.*

⁸³ *Laurel Heights I*, supra, 47 Cal.3d at 403.

lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.⁸⁴ This analysis should focus on alternatives that would "avoid or substantially lessen any significant effects of the project, *even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.*"⁸⁵

Similarly, under NEPA, federal agencies must consider alternatives to their proposed actions as well as their environmental impacts.⁸⁶ The alternatives analysis has been called the "linchpin" of the Environmental Impact Statement.⁸⁷

The purpose of the discussion of alternatives is both to support the decision makers and to inform public participation. Thus, "[a]n EIR's discussion of alternatives must contain a quantitative analysis sufficient to allow informed decision making."⁸⁸ In the case at hand, the EIR/S must determine if alignments outside of the GEA are feasible and would substantially lessen the potential environmental impact of the Project.

XIII. CONCLUSION

Not only is the GEA a unique, diminishing resource in the Central Valley and the State of California, but these wetlands are also critical to the survival of migratory waterfowl, shorebirds, and other wildlife. Further loss or degradation of this largest remnant wetland habitat in the Central Valley will have a negative impact on migratory species that move across the North American continent and among continents during their annual cycle. For these reasons, protection of this unique ecosystem is essential to the preservation and maintenance of the productivity of this important natural heritage.

Bisection of this area by a HST would likely result in fragmentation and numerous other direct and indirect impacts. Prior to selecting an alignment through the GEA as a preferred alignment, the Authority is required to ensure that

⁸⁴ CEQA Guidelines § 15125.6.

⁸⁵ CEQA Guidelines, § 15126.6, subd. (a) & (b) (emphasis provided); see *Citizens for Quality Growth v. City of Mount Shasta*, 198 Cal.App.3d 433, 443-45 (1988).

⁸⁶ 40 CFR § 1502.14.

⁸⁷ *Monroe County Conservation Council, Inc. v. Volpe* (2d Cir. 1972) 472 F.2d 693.

⁸⁸ *Laurel Heights I*, supra, 47 Cal.3d at 404; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 733-735.

GWD/GRCD HST Comments

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it is fully informed about: (1) the project setting as it passes through the GEA; (2) the potential direct and indirect impacts the Pacheco alignment may have on the biological resources of the GEA and the continued viability of the GEA; (3) whether these impacts can be mitigated; and (4) whether other feasible alternatives, such as the Altamont Pass alignment, exist which would substantially or entirely avoid impacting the GEA.

Furthermore, Section 4(f) of the Department of Transportation Act and Executive Order 11990 permit the selection of an alignment through the GEA only where a finding is made that no other alignment is practical. In selecting a preferred alignment, the protection of state and federal natural resource areas and conservation easements in the GEA must take precedence over other Project considerations including cost and directness of route.

Representatives from the Districts would be happy to consult with Authority staff regarding the issues raised in this letter if additional information is needed. Thank you for considering these comments.

Sincerely,



Thomas A. Enslow

TAE:cnh
Enclosure

cc: Don Marciochi
Grassland Water District Board of Directors
Grassland Resource Conversation District Board of Directors

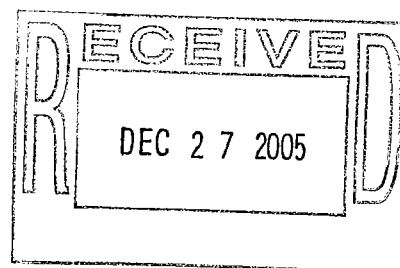


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MICHAEL J. SCANLON
EXECUTIVE DIRECTOR

December 21, 2005

Mehdi Morshed
Executive Director
California High Speed Rail Authority
925 L Street, Suite 1425
Sacramento, CA 95814



Dear Mr. Morshed, *Mehdi*

This is to acknowledge receipt of your Notice of Preparation, received by the San Mateo County Transportation Authority Board of Directors and the San Mateo County Transit District Board of Directors on November 28, 2005. This response also is on behalf of the Peninsula Corridor Joint Powers Board of Directors, a three-agency JPA comprising San Francisco, San Mateo and Santa Clara counties, which oversees Caltrain. The San Mateo County Transit District is the managing partner of Caltrain and I am writing to you in my capacity as Executive Director of Caltrain and the San Mateo County Transportation Authority and General Manager/CEO of the San Mateo County Transit District.

In a related matter, this is to notify you that the Peninsula Corridor Joint Powers Board at its December 8, 2005, meeting unanimously voted to endorse the Guiding Principles of the Silicon Valley High-Speed Rail Coalition. The JPB already is on record supporting the use of the Caltrain right of way for the California High-Speed Rail system. The resolution of endorsement, which is attached, includes support for the selection of the Pacheco Pass alignment as the corridor through which the proposed California High-Speed Rail service would enter the Bay Area and the joining of the Coalition by the JPB.

The resolution further contains important and noteworthy additional language indicating that support for the Coalition's guiding principles and the JPB's membership in the Coalition are conditioned upon adherence to an additional principle that design, construction and operation of the California High-Speed Rail service will be "fully consistent with the goals and operational requirements associated with Caltrain and with the values of the cities on the Peninsula through which the system will be constructed and operated."

Please do not hesitate to contact me should you have any questions or wish to discuss this issue further.

Sincerely,

Michael J. Scanlon
Executive Director – JPB & SMCTA
General Manager/CEO – SamTrans

Enclosure

Cc: Peninsula Corridor Joint Powers Board
San Mateo County Transit District Board
San Mateo County Transportation Authority Board
David Miller, Esq.

PENINSULA CORRIDOR JOINT POWERS BOARD
1250 San Carlos Ave. – P.O. Box 3006
San Carlos, CA 94070-1306 (650)508-6269

RESOLUTION NO. 2005- 54
BOARD OF DIRECTORS, JPB
STATE OF CALIFORNIA

* * *

**ADOPTING GUIDING PRINCIPLES OF SILICON VALLEY HIGH SPEED RAIL
COALITION**

WHEREAS, the California High-Speed Rail Authority ("HSRA") is continuing to evaluate a proposed high-speed rail system that will link Northern and Southern California; and

WHEREAS, the Peninsula Corridor Joint Powers Board ("JPB") has been on record since 1996 in support of high-speed rail development; and

WHEREAS, more particularly, pursuant to Resolution Numbers 1996-35, 1999-48 and 2003-24, the JPB officially has memorialized its endorsement of the principle of high-speed rail serving the Peninsula Corridor; and

WHEREAS, additionally, the JPB and HSRA have entered into a Memorandum of Understanding which sets forth a framework for cooperation between the two agencies for development of a high-speed rail system in a manner that will utilize the JPB's right-of-way on a shared corridor basis; and

WHEREAS, the Silicon Valley High-Speed Rail Coalition "(Coalition)" also supports the construction of a high-speed rail line that connects Northern and Southern California as a means of relieving highway and air traffic congestion between the San Francisco Bay Area and Los Angeles; and

WHEREAS, the Coalition endorses the principle that the high-speed rail line should enter the San Francisco Bay Area from the Central Valley through a Pacheco Pass alignment for

various reasons, including that this alignment will utilize an existing transportation corridor rather than creating a new one, and will enable maximum service to this region's three largest cities, San Jose, San Francisco, and Oakland; and

WHEREAS, the Coalition has requested the JPB to endorse its Guiding Principles as more particularly enunciated on Attachment A-1 to this Resolution; and

WHEREAS, following due deliberations and predicated upon policies previously adopted by the JPB in support of high speed rail in general and utilization of the existing Caltrain in particular, the JPB finds it to be both appropriate and timely to endorse the Coalition's Guiding Principles.

NOW, THEREFORE, BE IT RESOLVED, that the JPB hereby endorses the Guiding Principles of the Silicon Valley High-Speed Rail Coalition and authorizes joining the Coalition in support of the aforementioned Guiding Principles, subject to and conditioned upon adherence to the principle that the high-speed rail system is designed, constructed and operated to be fully consistent with the goals and operational requirements associated with Caltrain and with the values of the cities on the Peninsula through which the system will be constructed and operated; and

BE IT FURTHER RESOLVED that the Executive Director is requested to transmit a copy of this Resolution to the California High-Speed Rail Authority and the Silicon Valley High-Speed Rail Coalition.

Regularly passed and adopted this 8th day of December 2005 by the following vote:

AYES: Cisneros, Gage, Hartnett, Lloyd, McLemore,
Sunshine, Yeager, Nevin

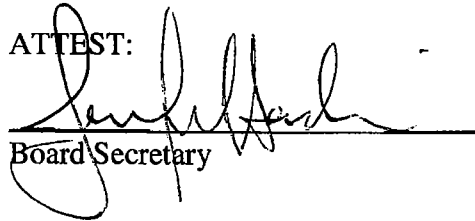
NOES: None

ABSENT: Maxwell



Chair, JPB

ATTEST:



Board Secretary



December 19, 2005

Dan Leavitt
Deputy Director
California High-Speed Rail Authority
925 L Street, Suite 1425
Sacramento, CA 95814

Dear Mr. Leavitt:


Per the Notice of Preparation of a Program Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for a Bay Area to Central Valley High-Speed Rail Train, VTA offers the following comments. Furthermore, please find Attachment A, which contains additional comments specific to the technical aspects of the Notice of Preparation of the EIR/EIS.

1. VTA strongly supports the concept of a high-speed rail line connecting Northern and Southern California as a means for relieving highway and air traffic congestion between the Bay Area and Los Angeles.
2. VTA strongly supports the Pacheco Pass alignment as the entry point of the high-speed rail system into the Bay Area and opposes any route between Pacheco Pass and the Altamont Pass through the Hamilton range.
3. The Pacheco Pass alignment would provide more direct, faster and frequent service to the three largest urban centers in the region: San Jose, San Francisco and Oakland. The Altamont Pass alignment would split service between these areas.
4. The Pacheco Pass alignment would provide direct, mainline service to hundreds of high-technology businesses in the Silicon Valley area, a primary economic engine for the U.S. economy.
5. The Pacheco Pass alignment would provide more efficient and direct, mainline service to San Jose, the largest city in the Bay Area and 10th largest city in the nation.
6. The Pacheco Pass alignment would minimize adverse environmental impacts.
7. The Pacheco Pass alignment would follow an existing transportation corridor, rather than creating a new corridor. VTA support running high-speed rail along as much of the Caltrain commuter rail service corridor as feasible. This will reduce the cost of constructing the high-speed rail line as well as reinforce the existing rail service between Gilroy and San Francisco by increasing the speed, frequency and safety of Caltrain commuter rail service.

8. The Pacheco Pass alignment will not pass through or under Henry Coe State Park or through land likely to be annexed into the park in the near future.
9. For service to San Francisco, the Altamont Pass alignment would require building a new bridge or tunnel across San Francisco Bay, which would pose considerable environmental challenges, be more costly and could result in project schedule delays.
10. By efficiently serving the three Bay Area demand centers of San Jose, San Francisco and Oakland, the Pacheco Pass alignment will be able to alleviate capacity constraints on the BART system. Conversely, an Altamont alignment will rely heavily on BART and thus exacerbate the capacity constraints that will exist on the BART system in the future.
11. The California High-Speed Rail Authority has thoroughly studied the Altamont Pass alignment, withdrew it from further consideration, and did not include it for consideration in the Draft Program EIR/EIS because of the superiority of other options.
12. VTA opposes efforts to turn the high-speed rail service into a commuter line connecting the Central Valley and the Bay Area, as it would be inconsistent with the primary mission of the high-speed rail service, which is providing a competitive long-distance transit alternative between northern and southern California. We do support expanding existing commuter service such as the Altamont Commuter Express (ACE) and the Capitol Corridor Intercity Rail Service to serve this need.

Thank you for your consideration.

Sincerely,



Michael T. Burns
General Manager

ATTACHMENT A
Technical Comments Regarding the Notice of Preparation
for the Program EIS/EIR
for the Bay Area to Central Valley High-Speed Train

Santa Clara Valley Transportation Authority (VTA), serving as the primary organization developing transportation policy in Santa Clara County, requests the opportunity to review deliverables and draft documents related to the above referenced Notice of Preparation and environmental documentation.

In addition to its policy duties, VTA operates transit services including a network of 69 weekday bus routes and 42-mile light rail network. VTA is also one of three partner members of the Peninsula Corridor Joint Powers Board (PCJPB), the Capitol Corridor Joint Powers Board (Capitol Corridor) and a funding partner for the Altamont Commuter Express service. Finally, VTA is the lead agency implementing the extension of the San Francisco Bay Area Rapid Transit (BART) system to Milpitas, San Jose and Santa Clara.

VTA is a member of the Steering Committee for Metropolitan Transportation Commission's (MTC) Regional Rail Study effort. However, because VTA is not a member of the Project Management Team, there are limited opportunities to participate in the formation of study direction and execution. VTA expects that the High-Speed Rail Authority staff, as an equal member of the Project Management Team, will act within its own best interests and ensure that the Regional Rail Study effort is objective and provides for a fair and reasonable study of alternative alignments for the High-Speed Rail Service.

The following comments serve as VTA's concerns for preparation of the environmental document:

Environmental Impacts related to Existing vs. New Rail Corridors

The document will have to study the trade-offs between activating service in abandoned or non-existing rail corridors versus supplementing an existing rail corridor with additional (or replacement) service. Specific issues of concern are the *additional* impacts of new rail service on wetlands, sensitive wildlife habitats and noise and visual issues versus pre-existing conditions where rail is already in place. In addition, there will have to be study of the environmental impacts of developing new feeder and connecting services (such as shuttle buses or BART system capacity) versus enhancing existing programs and facilities.

Operational Implications

The operational implications of both alignment alternatives will need to be studied in depth and included in the financial section of the environmental document. The HSTA will be asked to demonstrate that the project will achieve a measure of operational cost efficiency through the alignment of the system, and that California taxpayers are not being asked to subsidize an inefficient operational scheme because of the alignment selected. Secondly, the impact of operational implications on issues such as yard and maintenance facilities as well as vehicle requirements will have to be considered in any analysis.

Impact on Sprawl and "Leapfrog" Development

The HSTA will have to analyze the potential impacts of the new service on land use development in areas beyond the traditional 9-county Bay Area. If new service through Tracy is developed, the document will have to study its impacts on development in San Joaquin County and the subsequent needs this development will place on transportation and environmental infrastructure. In addition, the impact of potential development on agricultural lands will need to be considered.

Impact on Rail Freight Network

The document must consider the impact development of a HST will have on the existing and future ability to serve the rail freight needs of the Bay Area and the entire state. If the alignment is proposing to use a portion of a rail corridor, there must be an estimate of how the ability to deliver freight service in a timely manner will be impacted. Also, an accounting for how the freight operators will be compensated should be included.

HST Stations in Livermore and/or Pleasanton

The document must consider a station or stations in the Tri-Valley area of Livermore, Pleasanton and Dublin. It is unacceptable logic to conclude the service will pass through these areas without providing a station. As a result, the impacts of such a station on the surrounding transportation and development infrastructure must be considered.

HST Station at San Jose International Airport

San Jose International is the only airport in the state's top five airports that will not receive service from the proposed HST. There will need to be exploration of serving this important Bay Area facility through HST service.

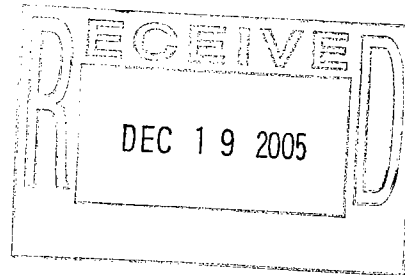
Capacity of Connecting Transit

The document will need to evaluate the impact of HST and alternative alignments on connecting transit systems such as VTA Light Rail, BART, MUNI and AC Transit. Where capacity issues exist and will likely be exacerbated by HST service, the document will have to propose a means of addressing this impact.



December 15, 2005

Mr. Dan Leavitt
California High Speed Rail Authority
925 L Street, Suite 1425
Sacramento, CA 95814



Subject: Scoping comments for PEIR/EIS on the proposed High-Speed Train

Dear Mr. Leavitt,

The East Bay Regional Park District ("District") is providing the following scoping comments for the Program EIR/EIS of a Bay Area to Central Valley High-Speed Train. This ambitious project has the potential to affect a number of existing regional parks and trails within northern Alameda County. This includes, but may not be limited to, the following parks, preserves and recreation areas:

• Del Valle State Recreation Area	4315 acres
• Mission Peak Regional Preserve	2998 acres
• Vargas Plateau Regional Preserve	1030 acres
• Pleasanton Ridge Regional Park	4742 acres
• Brushy Peak Regional Preserve	1783 acres
• Shadow Cliffs Regional Recreation Area	266 acres
• Dry Creek/Pioneer Regional Park	1626 acres
• Quarry Lakes Regional Recreation Area	538 acres
• Ardenwood Preserve	208 acres
• Coyote Hills Regional Park	<u>978 acres</u>

TOTAL 18,484 acres

Other important open space and habitat areas in the area may also be affected, including the Department of Fish and Game's Eden Landing Ecological Preserve and the Don Edwards Fish and Wildlife Refuge. Impacts to these areas should also be addressed in the EIR/EIS.

The following existing and planned regional trails may also be affected by the proposed project:

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- Alameda Creek Trail
- Niles Canyon Trail
- Bay Area Ridge Trail
- San Francisco Bay Trail
- Iron Horse Trail
- Niles Canyon to Shadow Cliffs Trail
- San Joaquin County to Shadow Cliffs Trail
- Shadow Cliffs to Morgan Territory Trail
- Tassajara Creek Trail

Until specific rail corridors alignments are identified for analysis, the District cannot provide specific scoping comments on how or if the proposed project may affect District facilities. I urge you to contact the District directly when specific proposed alignments are identified so that we can identify potentially affected facilities and provide more detail scoping comments on potential project effects to District facilities. In addition, since this project will likely obtain federal transportation funding, we request that affected District parks and trails be addressed in the EIR/EIS in a Section 4(f) alternatives analysis for both constructive use and potential take of parklands.

Please contact me should you have any questions or wish to arrange a meeting to discuss our facilities and the potential impacts of this proposed project. I can be reached at (510) 544-2622. Please include my name on any future mailings for this project.

Sincerely,



Brad Olson
Environmental Programs Manager

cc. Mendel Stewart, US Fish and Wildlife Service
Carl Wilcox, Department of Fish and Game
Bettina Ring, Bay Area Open Space Council
Lloyd Wagstaff, The Nature Conservancy
Laura Thompson, San Francisco Bay Trail
Bob Power, Bay Area Ridge Trail